

Editorial

Archival authenticity and intellectual property law

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In late October 2022, news surfaced that Steve Jobs' widow had introduced the Steve Jobs Archive.¹ Focused on 'Steve's values,'² the archive—now only a website in its public-facing form—challenges the traditional notion of an archive by not 'offering up a repository of personal correspondence, notes and items for public research and inquiry.'³ Rather, the Steve Jobs Archive's focus on Jobs' ideas and philosophies offers a malleable, inspirational tool and opportunity for individual contributions to the Steve Jobs tradition as its public engagement.⁴ For the archive's founder, Steve Jobs' widow, it presents an 'opportunity to curate the historical record'⁵ about Steve Jobs himself. Given the iconic status of Steve Jobs in our contemporary society, the Steve Jobs Archive might first seem a *sui generis* initiative.

It is not.

Corporations, individuals, and even descendants with links to inventions, artistic productions and cultural moments are increasingly taking advantage of the power of an archive: the power to be the arbiter of authenticity and veracity for the public, official places of storytelling for brands and gateways to the past for present publics. At times this archival authenticity⁶ seems to work alongside

intellectual property (IP) law; at other times it operates in IP law's negative spaces;⁷ or sometimes it even exists as a counterweight to existing IP rights. The relationship between IP law and archives that preserve and valorize the tangible forms and the intangible ideas and expressions of IP, as well as the authenticity archives offer, raises questions. How should we understand the role of an archive and the authenticity that it brings with it compared to the role of IP law? Is an archive a proper partner to IP law, a threat, or something altogether different that does not bear a comparison? These questions seem timely, especially as academics entertain the purposes of IP law and its application today and as practitioners advise brands, creatives and inventors on the best ways to protect, monetize and market their designs, inventions, works and products.

There are tensions between the uses and purposes of IP law and the uses and purposes of archives. In technology companies, IP rights are often an important part of the control of products and market share. Visit Apple's

* Email: felicia.caponigri@alumni.imtlucca.it. Special thanks to the editors of the Journal of Intellectual Property Law & Practice, especially Professor Eleonora Rosati. Any errors are my own. Guest Scholar, IMT School for Advanced Studies Lucca and Founder, Fashion by Felicia LLC.

1 Tripp Mickle, 'Who Gets the Last Word on Steve Jobs? He Might' *The New York Times* (New York, 22 October 2022). Available at <https://www.nytimes.com/2022/10/22/technology/steve-jobs-archive.html> (accessed 3 November 2022).

2 *The Steve Jobs Archive*. Available at <https://stevejobsarchive.com/> (accessed 3 November 2022).

3 Tripp Mickle (n 1). The article notes that 'More than a dozen archivists and scholars who spoke to The New York Times questioned even calling it an archive.'

4 *The Steve Jobs Archive* (n 2).

5 Tripp Mickle (n 1).

6 Thus far, the term 'archival authenticity' has most often been used in an IP and technology space to refer to the nuances of authenticating documents in the digital era, and in the context of how technology, such as the blockchain, can be a partner in ascertaining authenticity. See Peter B Hirtle, 'Archival Authenticity in a Digital Age' in *Authenticity in a Digital Environment* 8–23 (Council on Library and Information Resources Washington, DC, 2000) (asking 'What characteristics of traditional analog archives give them the power to authenticate? And how can this power be maintained in the digital world, both for archives and for other cultural

heritage repositories in general?'); Mark Bell et al. 'Underscoring Archival Authenticity with Blockchain Technology' (2019) 32 *Insights* 21. Of course, the role of an archive in ascertaining historical facts and providing authentic narratives is prevalently explored in cultural heritage scholarship. See, for example, Agnese Ghezzi, 'Filing the World: Archives as Cultural Heritage and the Power of Remembering' (2021) 19 *International Journal of Constitutional Law* 1738–1755. The general role of corporate archives and museums in supporting brand heritage and value propositions is also referred to in literature that is in between the marketing and cultural heritage disciplines. See, for example, Monica Amari, *I Musei delle Aziende. La Cultura della Tecnica tra Arte e Storia* (Franco Angeli, 2008) (mapping corporate archives and museums throughout Italy). At least one fashion law text has acknowledged the legal issues that may arise in using a fashion archive: see Rosie Burbidge, *European Fashion Law: A Practical Guide from Start-Up to Global Success* 203–208 (Elgar Practical Series, 2019) (considering the power of an archive to 'tell a story' and to 'showcase fashion heritage', although not mentioning archival authenticity and concentrating on the legal issues of copyright and design rights in objects in the archive, and the legal ramifications of the sale of an archive).

7 Christopher B Sprigman and K Raustala, 'The Piracy Paradox: Innovation and Intellectual Property in Fashion Design' (2006) 92 *Virginia Law Review* 1687. See also Amy Adler, 'Why Art Does Not Need Copyright' (2018) 86 *The George Washington Law Review* 313 (explaining how a norm of authenticity acts to frustrate or reframe the value of copies in the contemporary art market).

IP page⁸ or consider the global *Apple v. Samsung* litigation⁹ and technology companies' use of trade mark and patent law to reap the monetary rewards of inventions and to maintain a status as the source of specific products is evident. But enforcing IP rights, even if you have many of them, may not be enough to actualize the purposes of patent law for an inventor: namely, to reap economic benefits from an initial investment of time and labour.¹⁰ Nor might enforcement of trade marks 'protect producers from competitors' illegitimate interference with their trade'.¹¹ As a commentator observed of the decades-long design patent litigation between Apple and Samsung, "it really didn't accomplish anything"—'Apple won on paper, but it failed in its goal to gain a competitive advantage over Samsung ... Samsung and other handset makers have kept up the pressure with strong market share and innovative products'.¹²

In these cases, brand identity and marketing can fill a gap: just think of the 'I'm a MAC, I'm a PC' ads.¹³ When archives controlled by corporations act as the repository of brand identity by preserving corporate ephemera,

they can be fonts of inspiration for these marketing campaigns, providing access to economic results not obtained through enforcement. Archives can provide access to cultural cachet and legitimacy, which is beyond the scope of IP rights. Archives as a vehicle for brand identity may not be necessary in all circumstances,¹⁴ but, in specific circumstances, they can provide a stamp of authenticity and accompanying access to a brand's 'official' universe that may be craved by consumers.¹⁵ This seems to be most the case in industries where function plays a comparatively lesser role than form; where competition and creativity are based not only on how well a product functions but, on its message, or its ability to reference a specific cultural moment and even to create community. Whereas we might want to collect an older iPhone for its historic or nostalgic value,¹⁶ we will not necessarily want to use the 'tech relic'¹⁷ as a phone. Archival authenticity might, therefore, play a comparatively less important role in industries where function is the primary value proposition. But in other cases, function and nostalgic value meet as when we listen to vinyl records and photograph with a non-digital camera.¹⁸ In the automotive industry, innovation and any accompanying IP protection is key, but corporate archives often help to contextualize new models in a historic brand narrative.¹⁹

Archival authenticity currently seems to be doing the heaviest lifting in industries where style and form are more prized than function and where, therefore, products often exist in negative spaces of IP law and in low-IP spaces.²⁰ When established forms of IP are combined in

8 'Intellectual Property', *Apple*. Available at <https://www.apple.com/legal/intellectual-property/> (accessed 3 November 2022).

9 *Samsung v Apple*, 580 U.S. ____ (2016); Jack Nicas 'Apple and Samsung End Smartphone Patent Wars' *The New York Times* (New York, 27 June 2018). Available at <https://www.nytimes.com/2018/06/27/technology/apple-samsung-smartphone-patent.html> (accessed 3 November 2022); *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWCA Civ 1339 (18 October 2012); Tribunale Milano Sez. spec. propr. industr. ed intell., 05/01/2012; Marc Mimler, 'The Aspects of Unfair Competition within the *Apple v Samsung* Litigation in Germany' (2013) 3 *Queen Mary Journal of Intellectual Property* 176–184.

10 Jeanne Fromer, 'Creativity in Trademark Law' (2011) 86 *Notre Dame Law Review* 1885, 1887. Available at <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1094&context=ndlr> (accessed 3 November 2022) (citing to *Dastar v Twentieth Century Fox Film Corp.* for the proposition that 'trademark law was not "designed to protect originality or creativity," while patent and copyright law were'). See also Craig Allen Nard, Michael J Madison, Mark P McKenna, *The Law of Intellectual Property* 2 (Wolters Kluwer, 4th ed, 2014) ('On the one hand, patent law strives to promote technologic innovations through proprietary rights, and, on the other hand, to provide legal space for access to those innovations and improve on them').

11 Jeanne Fromer, 'Creativity in Trademark Law' (2011) 86 *Notre Dame Law Review* 1885, 1891. Available at <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1094&context=ndlr> (accessed 3 November 2022) (citing in part to Mark McKenna, 'The Normative Foundations of Trademark Law' (2007) 82 *Notre Dame Law Review* 1839, 1841).

12 Jack Nicas, 'Apple and Samsung End Smartphone Patent Wars' *The New York Times* (27 June 2018). Available at <https://www.nytimes.com/2018/06/27/technology/apple-samsung-smartphone-patent.html> (accessed 3 November 2022).

13 Macno1, 'Get a Mac- Better' *YouTube*. Available at <https://www.youtube.com/watch?v=48jlm6QSU4k> (accessed 3 November 2022). Some scholars have also connected this to certain brands' 'focus on conveying information about the buyer', and therefore to having a communicative function and purpose beyond that contained in certain IP rights. See Marco Biagioli, Anupam Chander, and Madhavi Sunder 'Brands R Us' in H Sun, B Beebe, M Sunder (eds) *The Luxury Economy and Intellectual Property* (Oxford University Press, 2015) 77–92, 77 (exploring this for luxury brands with respect to trade marks, and 'sketching a cultural approach to brands').

14 Tripp Mickle (n 1) (observing 'Apple has seldom commemorated product anniversaries, saying it focuses on the future, not the past').

15 In the technology space, IBM's virtual archive is one example, providing official information about the history of the company, although this is a less dynamic use of archival material. See 'IBM Archives' *IBM*. Available at <https://www.ibm.com/ibm/history/> (accessed 4 November 2022).

16 Sarah Jackson, 'An Unopened First-Generation iPhone from 2007 still in Its Original Box Has Sold for More than \$39000 at Auction' *Business Insider* (17 October 2022). Available at <https://www.businessinsider.com/apple-first-generation-unopened-iphone-from-2007-auctions-for-39000-2022-10> (accessed 4 November 2022).

17 *ibid.*

18 'Film Is Not Dead: Demand Soars for Vintage Cameras in Developing Trend' *NBC News* (17 October 2022). Available at <https://www.nbcnews.com/nightly-news/video/film-is-not-dead-demand-soars-for-vintage-cameras-in-developing-trend-150890053734> (accessed 4 November 2022). Since 1996 Canon has had a virtual museum dedicated to sharing historical information which also provides souvenir images shot on Canon cameras. 'About Canon Camera Museum', *Canon Camera Museum*. Available at <https://global.canon/en/c-museum/> (accessed 4 November 2022).

19 'GM Heritage', *GM*. Available at <https://www.gm.com/heritage> (accessed 4 November 2022). Outside the GM brand, Ford's commercials share historic images and emphasize the length of their company. Ford Motor Company, 'Ford. 119 Years of Building| Ford', *YouTube*. Available at <https://www.youtube.com/watch?v=1ujvsRQNDx0> (accessed 16 November 2022).

20 Christopher B Sprigman and K Raustala, 'The Piracy Paradox: Innovation and Intellectual Property in Fashion Design' (2006) 92 *Virginia Law*

new collaborations, archival authenticity can give immediate value on the market to trade dress that might not yet have attained secondary meaning or to copyrights that may be small in scope or require nuanced readings of their original character. We see this most often in fashion, an industry in which brands and their corporate or family owners began archiving with purpose in the 1980s, following the Yves Saint Laurent show curated by Diana Vreeland at the Metropolitan Museum of Art.²¹ Fendi's 25th anniversary celebration of the Baguette, and its collaboration with Tiffany and Marc Jacobs as part of this celebration, this year offers examples. Fendi has made much in its promotional campaigns of the importance of the archive for re-editions of the Baguette, both visually and textually. While Fendi does have a registered word mark in 'Baguette' as applied to leather goods in Europe²² and in the USA,²³ the strength of trade mark rights in the design of the Baguette bag itself is not clear,²⁴ although the Fendi FF logo²⁵ as applied to the Baguette bag may give Fendi legal recourse against infringers or counterfeiters. Re-releases of Baguette bags from the Fendi archive²⁶

offer an authenticity of history and brand origin alongside IP rights in this case. Similarly, the creation of a Fendi Baguette in Tiffany Blue²⁷ is an example of how luxury conglomerates are now archive-mashing for greater authenticity of their product, blending two brand identities and histories so consumers can purchase a piece of the history of both. The trend of archive-mashing is also visible beyond brands that are owned by the same conglomerate. The 2021 Fendace collection was a collaboration between Fendi and Versace, owned by Capri Holdings. Described as an exchange of 'brand codes,'²⁸ Kim Jones and Donatella Versace each went into the archive of the other brand for inspiration,²⁹ riffing on past designs, some of which would hardly benefit from any IP right. Take a black dress with strategically placed openings and safety pins and the FF Fendi mark. Set aside any trade mark rights in the FF mark, or even in the dress design were it to be sufficiently non-functional and distinctive and consider copyright. In the context of today's plethora of cut-out dress designs, the design may or may not be considered sufficiently original under copyright law.³⁰ But the question of recognizing or rewarding originality is not necessarily relevant to incentivize Donatella Versace or Kim Jones, in this instance, to create. Nor is originality necessarily relevant to Fendace consumers. The dress is, in fact, a self-reference within the Versace universe, recalling the dress worn by Elizabeth Hurley in 1994 to the *Four Weddings and a Funeral* premiere.³¹ Donatella Versace herself has remade the 'original' dress several times, creating new derivative iterations for other celebrities³² and even a copy for the collection of the Costume Institute at the Metropolitan Museum of Art in 2016.³³ While the dress' cultural moment might be

Review 1687; Felicia Caponigri 'Fashion's Brand Heritage, Cultural Heritage, and "The Piracy Paradox"' (2021) 39 *Cardozo Arts & Entertainment Law Journal* 557. Available at <https://cardozoelj.com/fashions-brand-heritage-cultural-heritage-and-the-piracy-paradox/> (accessed 16 November 2022). See also Felicia Caponigri, 'Archival Authenticity or Iconic Copies? Some IP Thoughts on Dolce & Gabbana's SS23 Collection Curated by Kim Kardashian, and other Fashion Heritage at Fashion Week' *The IPKat* (30 September 2022). Available at <https://ipkitten.blogspot.com/2022/09/guest-post-archival-authenticity-or.html> (accessed 16 November 2022) (concentrating on the discussion of archival authenticity in the negative space of a copyright for Dolce & Gabbana's designs).

- 21 Suzy Menkes, 'Gone Global: Fashion as Art?' *The New York Times* (4 July 2011). Available at <http://www.nytimes.com/2011/07/05/fashion/is-fashion-really-museum-art.html> (accessed 5 November 2022).
- 22 EUTM 009679085, European Union Intellectual Property Office's (EUIPO), Registration Date: 30/06/2011, Available at <https://euipo.europa.eu/eSearch/#details/trademarks/009679085> (accessed 4 November 2022).
- 23 Registration Number 2803999, USPTO, Tess Search, Registration Date: 13 January 2004. Available at <https://tmsearch.uspto.gov/bin/showfield?f=doc&state=4810:jvxiwo.3.1> (accessed 4 November 2022).
- 24 Rosie Burbidge *European Fashion Law: A Practical Guide from Start-Up to Global Success* 38–39 (Elgar Practical Series, 2019) (discussing the EUIPO's rejection of Fendi's application for trade mark protection in its double Baguette design because the 'square-shaped bags are "utterly common" and combining the bags would not necessarily be seen as a sign of commercial origin'). See also Eleonora Rosati, 'EUIPO Board of Appeal holds (iconic) shape of Dior Saddle bag to lack distinctiveness for ... bags and handbags' *IPKat Blog* (27 September 2021). Available at <https://ipkitten.blogspot.com/2022/09/euipo-board-of-appeal-holds-iconic.html> (accessed 4 November 2022).
- 25 USPTO Registration Number 4036925, USPTO, Tess Search, Registration Date: 11 October 2011. Available at <https://tmsearch.uspto.gov/bin/showfield?f=doc&state=4804:eddqy.2.58> (accessed 4 November 2022) (for leather goods and clothing).
- 26 Lilah Ramzi, 'It's a Baguette—Fendi Re-Releases 25 Baguettes from the Archive' *VOGUE* (3 November 2022). Available at https://www.vogue.com/article/fendi-25th-anniversary-baguette-bags#intcid=_voguet-bottom-recirc_50abda0a-0bed-442e-b37a-b1fb5980e851_entity-topic-similarity-v2 (accessed 4 November 2022).

27 'Coming Soon: The Tiffany Baguette', *Tiffany & Co.* Available at <https://www.tiffany.com/stories/events/tiffany-x-fendi/> (accessed 4 November 2022).

28 'Fendace: The Fendi by Versace Collection', *Versace*. Available at <https://www.versace.com/us/en-us/world-of-versace/stories/advertising-campaigns/fendace.html> (accessed 4 November 2022).

29 Luke Leitch, 'How Do You Say Fendace? Kate Moss, Naomi Campbell, and More Step Out in Versace and Fendi's Runway Collaboration' *VOGUE* (21 September 2022). Available at <https://www.vogue.com/slideshow/fendace-versace-fendi-collaboration> (accessed 4 November 2022).

30 Although, after the much-debated *Star Athletica* case in the United States, there may be elements that are sufficiently separable as a first matter. Consider that the holes and safety pins could be conceptually placed on a canvas. *Star Athletica, LLC v Varsity Brands, Inc et al*, No. 15–866, 580 U.S. ____ (2017).

31 Marie Périer, translated by Helena Baron, 'From Liz Hurley in 1994 to Jennifer Lawrence in 2018: who wore the Versace dress better?' *VOGUE France* (21 February 2018). Available at <https://www.vogue.fr/fashion/fashion-inspiration/diaporama/from-liz-hurley-in-1994-to-jennifer-lawrence-in-2018-who-wore-the-versace-dress-better/49234> (accessed 4 November 2022).

32 *ibid.*

33 'Dress Spring/summer 1994, edition 2016', *The Metropolitan Museum of Art*. Available at <https://www.metmuseum.org/art/collection/search/>

relevant for evaluations of artistic value and, therefore, copyrightability in some legal systems,³⁴ the connection with the archive gives the design an authenticity and relevance beyond IP. This is in part why, when translated into a new universe where, thanks to archive-mashing, Fendi logos appear on the dress, the dress still has meaning. Taken from the archive of Versace looks, its connection to Versace's history means something beyond originality, source recognition or inventiveness for consumers.

When archival authenticity has a role beyond IP law, as an authentic communication or signal to consumers and even to a wider public, it also raises the question of how far brands' control over authenticity through a dynamic archive should reach. We see this today in tensions between resale platforms and brands' own participation in the circular economy. Public versions of archival authenticity at times duel with brands' own versions of the term.³⁵ Some brands that do not seek to enter the resale market seem to take third parties' authentication claims based on vintage pieces and brand ephemera as an affront on the control that brand exerts over their mark, over their products and over their brand's cultural cachet, more broadly.³⁶ Chanel's lawsuits against TheRealReal and What Goes Around Comes Around are recent examples, especially considering the important role which the archival *Patrimoine* collection plays in providing material for exhibitions about Coco Chanel in fashion museums.³⁷

Other brands, like Gucci, embrace third parties' interest in archival authenticity and past designs through agreements with resale platforms.³⁸ Gucci has also launched *Gucci Vault*, self-described as 'a careful curation of rare vintage Gucci pieces alongside exclusive capsule collections, limited-edition styles and other items from a selection of brands...'³⁹ and has been described as offering 'archive sales'.⁴⁰ The authenticity offered through Vault, the control over innovative drops and curated vintage pieces, has extended to the metaverse, another area in which the scope of IP rights is now being delineated.⁴¹

But when brands are viewed as the only actors who can provide authentic brand narratives, because of their access to archival pieces and corporate ephemera, the public's important role in archival authenticity can be undermined. The uncontrolled circulation of vintage pieces on the market, whether they are tangible iPhones or re-creations of the Versace dress and its design from *13 Going on 30*,⁴² raise public interest in past designs and products. In doing so, new parts of a brand's histories can be discovered and added to the authentic narrative. Indeed, public scrutiny can also correct *lacunae* in brands' presentations of their own archives—consider the case of Tom Ford's subtraction from the Gucci Museo.⁴³ Public evaluations of histories contained in archives can lead to contemporary discussions about brands' responsibilities in the face of founders' questionable behaviour (as some

713080?deptids=8&ft=versace&offset=0&rpp=40&pos=26 (accessed 4 November 2022). Another version of the dress was also loaned from the Versace brand and included in an earlier exhibit at the Metropolitan Museum of Art shortly after Gianni Versace's death. See *Richard Martin, Gianni Versace* (the Metropolitan Museum of Art, 1997).

34 Such as the Italian legal system where, after the Moon Boots case, works of industrial design, which have included fashion, need to have creative character and artistic value to benefit from copyright protection. See *Tecnica v. Anniel*, Tribunale Sez. Spec. Impresa,—Milano, 12/07/2016.

35 Kati Chitrakorn, 'The fight for the fashion archive: Brands, collectors and Gen Z face off' *VOGUE Business* (27 April 2022). Available at <https://www.voguebusiness.com/fashion/the-fight-for-the-fashion-archive-anna-sui-pucci-brands-gen-z-face-off> (accessed 4 November 2022).

36 In Chanel's current litigation against *What Goes Around Comes Around* the vintage reseller's sale and placement on the market of Chanel items through *What Goes Around Comes Around's* own authentication process has been alleged to create a false association with Chanel and to be trade mark infringement. The order for summary judgment notes that Chanel has never sold on the secondary market. *Chanel, Inc. v WGACA, LLC*, 18 Civ. 2253, 28 March 2022, United States District Court for the Southern District of New York, at 15 and 3. See also TFL, 'Chanel, The RealReal at Odds over Discovery in Trademark, Antitrust Lawsuit' *The Fashion Law* (16 December 2021). Available at <https://www.thefashionlaw.com/chanel-the-realreal-at-odds-over-discovery-in-trademark-antitrust-lawsuit/> (accessed 4 November 2022) (for an overview of the ongoing case).

37 *ibid.* Rosie Burbidge, *European Fashion Law: A Practical Guide from Start-Up to Global Success* 203 (Elgar Practical Series, 2019) (mentioning Chanel's archive and citing to Lou Stoppard, 'Fashion brands build museums as archives gain value' *Financial Times*, 22 July 2016); 'Gabrielle Chanel. Fashion Manifesto', *Chanel*, Available at <https://www.palaisgalliera.paris.fr/en/exhibitions/gabrielle-chanel-fashion-manifesto> (accessed 4 November 2022) (acknowledging Chanel's sponsorship of the exhibition and pieces on loan from the Patrimoine de CHANEL collection).

38 'The RealReal and Gucci launch Circular Economy Partnership' *The RealReal* (5 October 2020). Available at <https://investor.therealreal.com/node/7611/pdf> (accessed 4 November 2022); Misty White Sidell 'Louis Vuitton, Chanel, Hermès Bags Hit Amazon Through Secondhand Distributor' *WWD* (20 October 2022). Available at <https://wwd.com/fashion-news/designer-luxury-louis-vuitton-chanel-hermes-bags-hit-amazon-secondhand-distributor-1235394863/> (accessed 4 November 2022).

39 'About', *Gucci Vault*. Available at <https://vault.gucci.com/en-US/story/enter-vault> (accessed 4 November 2022).

40 Stephanie Hirschmiller 'Gucci Vault Is Live in the Sandbox Metaverse and It's Selling Exclusive Digital Collectibles' *Forbes* (27 October 2022). Available at <https://www.forbes.com/sites/stephaniehirschmiller/2022/10/27/gucci-vault-launches-in-the-sandbox-metaverse/?sh=3f3e38116237> (accessed 4 November 2022).

41 TFL, 'Hermès v. Rothschild: A Timeline of Developments in a Case Over Trademarks, NFTs' *The Fashion Law* (26 October 2022). Available at <https://www.thefashionlaw.com/hermes-v-rothschild-a-timeline-of-developments-in-a-case-over-trademarks-nfts/> (accessed 4 November 2022); TFL, 'A Few Trademark Registrations Shed Light on Branding in the Metaverse', *The Fashion Law*. Available at <https://www.thefashionlaw.com/a-few-trademark-registrations-shed-light-on-branding-in-the-metaverse/> (accessed 4 November 2022) (noting how RTFKT has registered marks for 'online retail store services featuring physical and virtual merchandise' and for 'downloadable virtual goods').

42 Jessica Testa 'How a Dress From '13 Going on 30' Came Back From the Dead' *The New York Times* (28 November 2021). Available at <https://www.nytimes.com/2021/11/25/style/versace-13-going-on-30-dress.html> (accessed 4 November 2022).

43 Suzy Menkes 'Gucci Feeds Its Florentine Roots' *The New York Times* (27 September 2011). Available at <https://www.nytimes.com/2011/09/28/fashion/gucci-opens-a-brand-museum-in-florence.html> (accessed 4 November 2022).

note with regard to Coco Chanel's collaboration with the Nazis⁴⁴). In this sense, as a legal notion beyond the limits of IP law, archival authenticity also has its perils. It may potentially expand IP owners' proverbial voice in the public square beyond IP law or lead to broader arguments to legitimize infringement claims. In these circumstances, the public at large may lose the opportunity to participate in a brand's wider community and may also suffer from an authenticity that is the product of marketed histories as opposed to an objective and historically accurate one.

Archival authenticity and IP law serve two different purposes. Archival authenticity seems to be overwhelmingly about storytelling and brand heritage. While some doctrines and individual IP rights might benefit from

archival authenticity, the negative spaces of IP law where archival authenticity seems most impactful indicate that they might best operate in parallel. As brands and products age and as inventors and creatives pass away, archives as institutions increasingly help us to appreciate the cultural impact of IP and its heritage value.⁴⁵ At times archival authenticity might, therefore, seem to be a better partner to cultural heritage law than IP law. As the concept of archives continues to be used by brands, creatives and their descendants, and members of the public to communicate authenticity, academics and practitioners might wish to consider and engage with the evolving, complex relationship between archival authenticity and IP rights.

44 Olivia Pinnock 'Do Coco Chanel's Nazi Connections Matter For Fashion Today?' *Forbes* (1 October 2020). Available at <https://www.forbes.com/sites/oliviapinnock/2020/10/01/coco-chanel-nazi-connection-matter-for-fashion-today/?sh=555710e454a5> (accessed 5 November 2022).

45 Which is even the case for emerging and recent digital products. See István Harkai, 'Preservation of video games and their role as cultural heritage' (2022) 17 *Journal of Intellectual Property Law & Practice* 844–856.